

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JOHN E. EGERSON II,

Plaintiff,

v.

Case No. 09-C-0184

RICK RAEMISCH,

Defendant.

DECISION AND ORDER

Plaintiff, John E. Egerson II, who is incarcerated at Green Bay Correctional Institution, lodged a pro se complaint under 42 U.S.C. § 1983, alleging violations of his constitutional rights. In an order dated April 6, 2009, I granted plaintiff's motion for order to pay filing fee from release account. On April 30, 2009, the court received the \$350.00 filing fee for this case.

Now, in a letter received by the court on May 11, 2009, plaintiff has asked to voluntarily dismiss this complaint. He has requested that \$5.00 of his filing fee be attributed to his petition for a writ of habeas corpus under § 2254, pending in Case No. 09-C-0437. He has also asked for a refund of the remaining \$345.00 he has paid to the court. Because plaintiff filed his motion regarding the payment of the filing fee from his release account at the same that he filed his complaint, plaintiff was not given the opportunity to voluntarily withdraw his complaint that this court generally provides to prisoners when it issues an order regarding the payment of an initial partial filing fee. Moreover, I have not yet screened plaintiff's complaint. Thus, I will grant plaintiff's requests.

IT IS THEREFORE ORDERED that plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** and this case is closed.

IT IS FURTHER ORDERED that the Clerk of this Court shall transfer \$5.00 of the filing fee received in this action to satisfy plaintiff's filing fee in Case No. 09-C-0437.

IT IS FURTHER ORDERED that the Clerk of this Court shall refund the remaining \$345.00 of plaintiff's filing fee to plaintiff's prison release account at Green Bay Correctional Institution.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 20 day of May, 2009.

/s _____
LYNN ADELMAN
District Judge